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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 28 2010
SRC 08 055 50345

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on December 4, 2007, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree.[1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In a November 30, 2007 letter accompanying the petition, counsel asserts that the petitioner is an alien of exceptional ability. This issue is moot, however, because the director found that the petitioner qualifies as a member of the professions holding an advanced degree. The record reflects that the petitioner received his Master of Science degree in Chemistry from Central Michigan University in 2004. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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[1] At the time he filed the petition, the petitioner indicated that he was in the United States as an F-1 nonimmigrant student.

The application for the national interest waiver cannot be approved. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The petitioner failed to submit this document or comparable portions of its successor form, ETA Form 9089. Accordingly, by regulation, the petitioner cannot be considered for a waiver of the job offer requirement. The director, however, does not appear to have informed the petitioner of this critical omission. Below, we shall consider the merits of the petitioner's national interest claim.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "*NYSDOT*"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement;

they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

With regard to the first two factors set forth in *NYSDOT*, it has not been established that the petitioner seeks employment in an area of substantial intrinsic merit or that the benefit he will impart to the United States would be national in scope. Part 6, "Basic information about the proposed employment," of the Immigrant Petition for Alien Worker, Form I-140, lists the petitioner's job title as a "Researcher." Counsel's November 30, 2007 letter accompanying the petition states:

> [The petitioner] has been working under several world-renowned Dendrimer and Nanoparticle research professors, and has been instrumental in increasing not only the awareness of this groundbreaking nanotechnology research, but also in furthering the applicability of the research into practical applications, which will be extremely beneficial to the national interest and global economy.

Counsel asserts that the petitioner "has been working under several world-renowned Dendrimer and Nanoparticle research professors," but there is no evidence establishing that the petitioner has held a nanotechnology research position since his graduation from Central Michigan University in 2004. Moreover, the petitioner's initial submission includes his fully executed Certificate of Eligibility for Nonimmigrant Student (F-1) Status – For Academic and Language Students, Form I-20, indicating that he is pursuing business studies at Houston Community College.[2] The Form I-20 states:

> The student named above has been accepted for a full course of study at this school, majoring in Business Administration and Management. The student is expected to report to the school no later than 08/27/05 and complete studies not later than 08/27/08. The normal length of study is 36 months.

Further, the petitioner's resume submitted with the instant Form I-140 petition on December 4, 2007 does not specify any job experience in a nanotechnology research position after July 2004. Accordingly, although nanotechnology research is an area of substantial intrinsic merit, it has not been established that the petitioner seeks employment in that area or that the benefit he will impart to the United States would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique

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[2] A search for the petitioner in the Student & Exchange Visitor Information System in March 2009 confirmed that his student status remained active with Houston Community College.

background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

According to his resume, the petitioner worked as a "Graduate Research Assistant" from January 2003 through July 2004 while pursuing his master's degree at Central Michigan University. The petitioner also submitted three letters from the Executive Vice President and Provost at Central Michigan University notifying the petitioner of his "appointment as full time graduate research assistant" in the Department of Chemistry during semesters from Fall 2002 through Spring 2004. Along with documentation demonstrating the intrinsic merit of nanotechnology research and the stature of his research supervisors [redacted] and [redacted], the petitioner submitted two articles he coauthored in *Electrophoresis* and *Journal of Chromatography A*. The petitioner also submitted a copy of his unpublished master's thesis.

While the petitioner's research at Central Michigan University was no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any master's thesis or research undertaken in a university setting, in order to be accepted for graduation, publication, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. In this case, the record does not establish that the petitioner's research findings represented a significant advance in nanotechnology.

The director requested further evidence that the petitioner had met the guidelines published in *NYSDOT*. In response, the petitioner submitted copies of documents already provided and articles demonstrating the importance of dendrimer nanotechnology research. None of these articles name the petitioner or discuss his specific accomplishments in the field. While information about the general importance of the petitioner's field of research may establish the intrinsic merit of his work, this documentation is not sufficient to show that an individual worker in his field qualifies for a waiver of the job offer requirement. *Id.* at 218.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director's decision noted that the submitted evidence did not establish any specific impact that

the petitioner's research articles have had on the field of dendrimer technology. The director's decision further stated:

> [T]he evidence focuses on dendrimer research and [redacted] impact on the field instead of the specific contributions of the petitioner himself. The fact that the petitioner is merely associated with a ground-breaking scientific researcher does not establish that a waiver of an approved labor certification is in the national interest.

On appeal, the petitioner resubmits copies of documents already provided and an unsigned letter from [redacted] listing 21 articles citing to the article that [redacted] coauthored with the petitioner in *Electrophoresis* in 2003. For researchers, citations offer an objective way of measuring the extent to which one researcher's work has influenced the work of others in the field. However, rather than submitting evidence of citations from an official source such as an online scientific database, the petitioner instead submitted a self-serving list of citing articles compiled in an unsigned letter from [redacted]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nevertheless, even if we were to consider the citations listed in [redacted] unsigned letter, we note that six of the citing articles were self-citations by [redacted] and [redacted] the petitioner's coauthors. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. In this instance, the unsigned letter from [redacted] indicates that the petitioner's work has only been moderately cited by independent researchers. The citation information submitted by the petitioner is not sufficient to demonstrate that his work has significantly influenced his field as a whole or otherwise sets him apart from other researchers in his field.

We note that citations are not the only means by which to show the petitioner's impact on his field. Reference letters from independent experts in the field can also play a significant role in this respect. For example, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from his immediate colleagues and coauthors. Here, however, the petitioner has not submitted any letters from independent references who provide specific examples of how his work has significantly influenced his field or has been applied by others to an extent that justifies a waiver of the job offer requirement.

In this matter, the petitioner has failed to submit sufficient evidence of any type that demonstrates his influence in the field as a whole. While the petitioner has contributed to projects undertaken at Central Michigan University during the course of his graduate studies, he has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the national interest waiver contemplates that the petitioner's influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability or who holds an advanced degree should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.